

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Schlothauer et al.
Serial No.: 10/521,097
371 Filing Date: November 4, 2005
Title: *Composition*

Art Unit: 1645
Examiner: Tongue, Lakia J
Confirmation No.: 7026

Mail Stop Amendment

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401 Dulany Street
Alexandria VA 22314

RESPONSE TO RESTRICTION REQUIREMENT

In response to the outstanding Restriction Requirement mailed January 11, 2008
Applicants elect Group I, claims 1-22, 24, 26-29 and 32-34 without traverse.

Applicants further elect the species *Lactobacillus sake* strain 570 for examination with traverse. Claims 1-9, 15-22, 24, 26-29 and 32-34 read on the elected species. The election of the microorganism is made with traverse because the Examiner has specifically indicated that "the examination will be restricted to only the elected microorganism and should not be construed as a species election." See p. 4 of Restriction Requirement. Applicants submit that since the Examiner has deemed each Group to "read[] on patentably distinct microorganism, enzyme or EPS" (see p. 3 of Restriction Requirement), it follows that an election of a microorganism would be an election of species. Applicants respectfully request that the Examiner clarify this matter.

Applicants acknowledge reference to Pailin *et al.*, *Letters in Applied Microbiology*, 33: 45-49 (2001) and reserve comment on this reference if and when a *prima facie* argument of unpatentability is presented with respect to this reference.

Should any further fees be required by the present Reply, the Commissioner is hereby authorized to debit or credit Deposit Account **19-4293**.

Respectfully submitted,

Date: 2-7-08

Customer No. 27890
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Phone: 202-429-6748
Fax: 202-429-3902

Harold H. Fox
Reg. No. 41,498